

**STATE OF MICHIGAN
DEPARTMENT OF ENERGY, LABOR & ECONOMIC GROWTH
OFFICE OF FINANCIAL AND INSURANCE REGULATION**

Before the Commissioner of the Office of Financial and Insurance Regulation

In the matter of:

**Steven Todd Kuczaj
System ID No. 0303978**

Enforcement Case No. 10-7789

Respondent

_____ /

Issued and entered
On 7/30/10, 2010
by Stephen R. Hilker
Chief Deputy Commissioner

ORDER TO CEASE AND DESIST

The Office of Financial and Insurance Regulation of the Michigan Department of Energy, Labor & Economic Growth, pursuant to the Administrative Procedures Act of 1969, 1969 PA 306, as amended; MCL 24.201 *et seq*; the Michigan Insurance Code, 1956 PA 218, as amended; MCL 500.100 *et seq.*, and the rules promulgated under the Michigan Insurance Code, says that:

**I
BACKGROUND**

1. At all pertinent times, Respondent Kuczaj was not licensed to sell, solicit, or negotiate insurance in the State of Michigan.
2. Respondent Kuczaj knew or had reason to know that Section 1201a of the Code states that a person shall not sell, solicit, or negotiate insurance in this state for any line of insurance unless the person is licensed for that qualification in accordance with Chapter 12 of the Code.
3. Respondent Kuczaj further knew or had reason to know that Section 1207(1) of the Code states that a person shall be a fiduciary for all money received or held by the agent in his or her capacity as an agent. Failure by an agent in a timely manner to turn over the money which he or she holds in a fiduciary capacity to the persons to whom they are owed is prima facie evidence of violation of the agent's fiduciary responsibility.
4. Respondent Kuczaj further knew or had reason to know that Section 1239(1)(d) of the Code states that in addition to any other powers under this act, the commissioner may place on probation, suspend, or revoke an insurance producer's license or may levy a civil fine under section 1244 or any combination of actions, and the commissioner shall refuse

to issue a license under section 1205 or 1206a, for improperly withholding, misappropriating, or converting any money or property received in the course of doing insurance business.

5. Respondent Kuczaj further knew or had reason to know that Section 1239(1)(h) of the Code states that in addition to any other powers under this act, the commissioner may place on probation, suspend, or revoke an insurance producer's license or may levy a civil fine under section 1244 or any combination of actions, and the commissioner shall refuse to issue a license under section 1205 or 1206a, for using fraudulent, coercive, or dishonest practices or demonstrating incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in this state or elsewhere.
6. Respondent Kuczaj further knew or had reason to know that Section 1239(1)(h) of the Code states that in addition to any other powers under this act, the commissioner may place on probation, suspend, or revoke an insurance producer's license or may levy a civil fine under section 1244 or any combination of actions, and the commissioner shall refuse to issue a license under section 1205 or 1206a, for forging another's name to an application for insurance or to any document related to an insurance transaction.
7. On or about December 7, 2009, the Office of Financial and Insurance Regulation (OFIR) received a written complaint from Backus Payne and Associates, LLC ("Backus Payne") alleging that Respondent Kuczaj was conducting unlicensed activity and failed to remit premiums he collected while holding himself out to the public as an insurance producer.
8. From January 2003 to November 2009, Respondent Kuczaj was employed by Backus Payne as an insurance producer. On November 3, 2009, Backus Payne terminated Respondent Kuczaj.
9. Between January 28, 2008 and March 3, 2009, Respondent Kuczaj personally picked-up approximately 12 premium checks from a plastic surgery center. Each check was cashed by Respondent Kuczaj at a party store. The premium was not forwarded to Backus Payne. Nor was the premium forwarded to the insurance company and no coverage was ever placed. Respondent Kuczaj was not signatory on the Backus Payne bank account. Respondent collected \$37,001, as follows:

- \$2,160 on January 28, 2008
- \$2,800 on March 14, 2008
- \$3,241 on April 3, 2008
- \$3,200 on June 16, 2008
- \$3,200 on July 18, 2008
- \$3,200 on August 19, 2008
- \$3,200 on October 14, 2008
- \$3,200 on November 13, 2008
- \$3,200 on December 8, 2008
- \$3,200 on January 16, 2009
- \$3,200 on February 11, 2009
- \$3,200 on March 3, 2009

improperly withholding, misappropriating, or converting any money or property received in the course of doing insurance business; and

WHEREAS, Respondent Kuczaj improperly withheld, misappropriated, or converted money received in the course of doing insurance business; and

WHEREAS, Section 1239(1)(h) of the Code, MCL 500.1239(1)(h) states that in addition to any other powers under this act, the commissioner may place on probation, suspend, or revoke an insurance producer's license or may levy a civil fine under section 1244 or any combination of actions, and the commissioner shall refuse to issue a license under section 1205 or 1206a, for using fraudulent, coercive, or dishonest practices or demonstrating incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in this state or elsewhere; and

WHEREAS, Respondent Kuczaj used fraudulent, coercive, or dishonest practices or demonstrating incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in this state; and

WHEREAS, Section 1239(1)(j) of the Code, MCL 500.1239(1)(j) states that in addition to any other powers under this act, the commissioner may place on probation, suspend, or revoke an insurance producer's license or may levy a civil fine under section 1244 or any combination of actions, and the commissioner shall refuse to issue a license under section 1205 or 1206a, for forging another's name to a document related to an insurance transaction; and

WHEREAS, Respondent Kuczaj forged another's name to a document related to an insurance transaction; and

WHEREAS, based on the foregoing, the Commissioner finds that Respondent Kuczaj is engaged in acts and practices that violate the Michigan Insurance Code; and

WHEREAS, the Commissioner finds this action necessary and appropriate in the public interest for the protection of the public and consistent with the purposes fairly intended by the policy and provisions of the Code.

IT IS THEREFORE ORDERED, pursuant to Section 251 of the Code, that the Respondent Kuczaj shall immediately **CEASE AND DESIST** from violating Section 1201a(1), 1207(1), and 1239(1)(d), (h), and (j) of the Code, MCL 500.1201a(1), 500.1207(1), and 500.1239(1)(d), (h), and (j).

A person who violates or otherwise fails to comply with a cease and desist order is subject to a civil fine of not more than \$1,000.00 for each violation not to exceed an aggregate civil fine of \$30,000.00. However, if the person knew or reasonably should have known the person was in violation of the order, payment of a civil fine of not more than \$25,000.00 for each violation not to exceed an aggregate civil fine of \$250,000.00. The Commissioner may also recover reasonable attorney fees if judicial action is necessary for enforcement of a cease and desist order under this section.

10. On or about August 31, 2009, a dermatologist mailed a premium check in the amount of \$2,081 to Backus Payne. This check was not deposited into Backus Payne's agency account. This check was cashed by Respondent Kuczaj at a party store. The funds from the cashed check were not deposited into the Backus Payne account.
11. On March 11, 2009, a doctor sent a premium check in the amount of \$4,191 to Backus Payne. This check was never deposited into the agency's account. This check was cashed by Respondent Kuczaj on March 24, 2009 at a party store. The funds from the cashed check were also not deposited into the Backus Payne account.

II CONCLUSIONS OF LAW

WHEREAS, Section 251 of the Code, MCL 500.251 states that in the reasonable exercise of discretion, the Commissioner may issue a cease and desist order if the Commissioner finds any of the following:

- (a) A person is conducting transactions of insurance for which a certificate of authority is required by this act without having obtained a certificate of authority.
- (b) A person is acting as an insurance agent, solicitor, adjuster, or counselor without a license as required by this act.
- (c) A person is engaged in an act or practice in the business of insurance for which authority from or notification to the Commissioner is required by this act and the person has not received authority or given notification; and

WHEREAS, Section 1201a(1) of the Code, MCL 500.1201a(1) states that a person shall not sell, solicit, or negotiate insurance in this state for any line of insurance unless the person is licensed for that qualification; and

WHEREAS, the records of OFIR disclose that Respondent Kuczaj is not licensed under Section 1201a(1) of the Code to act as an insurance producer in the State of Michigan; and

WHEREAS, Section 1207(1) of the Code, MCL 500.1207(1) states that a person shall be a fiduciary for all money received or held by the agent in his or her capacity as an agent. Failure by an agent in a timely manner to turn over the money which he or she holds in a fiduciary capacity to the persons to whom they are owed is prima facie evidence of violation of the agent's fiduciary responsibility; and

WHEREAS, Respondent Kuczaj failed to act as a fiduciary for money he received or held in his capacity as an agent and failed to timely remit this money to whom it was owed; and

WHEREAS, Section 1239(1)(d) of the Code, MCL 500.1239(1)(d) states that in addition to any other powers under this act, the commissioner may place on probation, suspend, or revoke an insurance producer's license or may levy a civil fine under section 1244 or any combination of actions, and the commissioner shall refuse to issue a license under section 1205 or 1206a, for

A person who is the subject of a cease and desist order may contest the order by requesting a hearing before the Commissioner not later than 30 days after the order is delivered or mailed to the person. Within 10 days after receiving the request, the Commissioner shall commence a hearing in accordance with the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969. Pending the hearing, the cease and desist order continues in full force and effect unless the order is stayed by the Commissioner. Any request for a hearing should be addressed to: the Office of Financial and Insurance Services, Attention: Hearing Coordinator Tracy Janousek, P.O. Box 30220, Lansing, Michigan 48909.

OFFICE OF FINANCIAL AND
INSURANCE REGULATION

By: 
Stephen R. Hilker
Chief Deputy Commissioner

